

AC10R

International Mobile Satellite Organization
ADVISORY COMMITTEE

Tenth Session

IMSO/AC/10/Report
Origin: Chairman of
Advisory Committee
Date: 15 March 2005

**REPORT OF THE TENTH MEETING OF THE
ADVISORY COMMITTEE**

28 FEBRUARY/1 MARCH 2005

**REPORT OF THE TENTH MEETING OF THE
ADVISORY COMMITTEE**

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| 1 Opening of the Meeting | 1 |
| 2 Approval of Agenda | 1 |
| 3 Outcome of the Ninth Session of the Advisory Committee | 1 |
| 4 Draft Reference Public Services Agreement | 1 |
| 5 Any Other Business | 8 |
| 5.1 Measures to Enhance Maritime Security | 8 |
| 5.2 Update on UNIDROIT | 9 |
| 5.3 Date of Next Meeting | 9 |
| 5.4 Possible Extraordinary Session of the Assembly | 9 |
| 6 Approval of Report | 10 |

LIST OF ANNEXES

| | |
|--|----|
| Annex I Agenda for the Tenth Meeting of the IMSO Advisory Committee | A1 |
| Annex II List of Participants | A3 |
| Annex III Terms of Reference of Advisory Committee | A5 |

REPORT OF THE TENTH MEETING OF THE ADVISORY COMMITTEE

1 OPENING OF THE MEETING

The Advisory Committee met at IMSO Headquarters on 28 February and 1 March 2005 under the chairmanship of Mr Mohammed Dukuly of Liberia. The Agenda, List of Participants and Terms of Reference are attached at Annexes I to III, respectively, to this Report. The representatives of Denmark, Portugal and the Department of Commerce of the United States of America, attended via conference call.

2 APPROVAL OF AGENDA

The Committee approved the Agenda, which is attached at Annex I.

3 OUTCOME OF THE NINTH SESSION OF THE ADVISORY COMMITTEE

The Committee noted the report of its Ninth Session, which was held on 30 November 2004. The report was sent to all Parties on 6 December 2004.

4 DRAFT REFERENCE PUBLIC SERVICES AGREEMENT

4.1 The Committee noted that, at its Seventeenth Session, the IMSO Assembly (paragraph 6.2.21 of Assembly/17/Report refers) had requested the Advisory Committee to “work with the Director in developing a draft Reference Public Services Agreement and to assist the Director with any matters pertaining to the introduction of new Providers”.

4.2 The Committee recalled that Inmarsat Ltd had offered to assist in developing a draft Reference Public Services Agreement, and that it may eventually be necessary to revise the existing Public Services Agreement between Inmarsat Ltd and the Organization to bring it into line with any new Reference Public Services Agreement that may be adopted in the future.

4.3 The Committee agreed that representatives of Inmarsat, Iridium and Orbcomm could attend the second day of the meeting, as observers, and as necessary they were encouraged to contribute to the discussions on the draft Reference Public Services Agreement.

4.4 The Committee also recalled that, at its Ninth Session (AC/9/Report, paragraphs 5.1.6 to 5.1.10 refer), it had:

- (a) held a brief preliminary discussion of the draft Reference Public Services Agreement, recognizing that there had not been the opportunity for a thorough review of the draft;
- (b) noted that a substantial amount of work was needed to be carried out as soon as possible in order to refine the draft Public Services Agreement, taking into account work to be done within IMO;
- (c) noted that Inmarsat and the potential providers Iridium and Orbcomm would work together to produce a further draft Reference Public Services Agreement, to be submitted to the Director;
- (d) requested the Director to review the draft Reference Public Services Agreement and produce a composite text for circulation to the members of the Committee, for their review; and
- (e) agreed that it would carry out a detailed discussion on the further draft Reference Public Services Agreement at its next Session.

4.5 The Committee noted document AC/10/2 containing the text of a draft Reference Public Services Agreement which had been prepared by Inmarsat, in conjunction with representatives of Iridium, NACLS and Orbcomm.

4.6 The Committee also noted document AC/10/3 containing the text of a draft Reference Public Services Agreement which had been prepared by the Director, taking account *inter alia* of the views expressed by the present and potential providers, and agreed to base its discussion of the draft Reference Public Services Agreement on this document

4.7 In relation to the oversight of future providers of GMDSS, the IMSO Assembly, at its Seventeenth Session in September 2004, had agreed by an overwhelming majority that IMSO was willing to carry out such oversight (ASSEMBLY/17/Report, paragraph 6.2.17 refers). At its Seventy-Ninth Session, the IMO MSC had confirmed and reiterated its decision at MSC 78 that IMSO was the appropriate organization to carry out the oversight function of future mobile satellite services providers for the GMDSS (MSC 79/23, paragraph 22.34 refers). In his letter dated 24 January 2005, the Secretary-General of IMO formally invited IMSO to carry out that oversight role forthwith. In view of the fact that IMSO's oversight of mobile satellite service providers for the GMDSS is carried out on behalf of IMO, the Committee noted that the Reference Public Services Agreement and IMO Resolution A.888 were fundamentally linked and their revised texts must be developed in parallel.

IMO Assembly Resolution A.888

4.8 The Committee noted that, at the Seventeenth Session of the IMSO Assembly, held in September 2004, some delegations had expressed the hope that IMO would make progress in reviewing IMO Assembly Resolution A.888(21) "Criteria for the Provision of Mobile-Satellite Communication Systems in the Global Maritime Distress and Safety System (GMDSS)", to complement the amendments to the IMSO Convention. In this regard, the Assembly authorized the Secretariat to submit a contribution to the Ninth Session of the IMO Sub-Committee on Radiocommunications and Search and Rescue (COMSAR) to be held in February 2005. This contribution "Global Maritime Distress and Safety System: Approval of Satellite Systems for Use in the GMDSS" was duly submitted to IMO on 4 November 2004, and was sent to all IMSO Parties on the same date.

4.9 The Committee also noted that COMSAR, after discussion of documents submitted by IMSO, Denmark and Liberia, and the USA, established a correspondence group, coordinated by IMSO, to review IMO Resolution A.888(21) and develop a revised text for consideration by COMSAR at its Tenth Session in March 2006 which, *inter alia*, would be fully in line with the Reference Public Services Agreement being developed by IMSO. In this regard, the Committee noted document AC/10/4 "Initial Draft of the Revised IMO Resolution A.888", which had been prepared by the Director. The IMSO Head of Technical Services, as Chairman of the IMO correspondence group, intends to table this document as a basic document

for consideration by the correspondence group. The Head of Technical Services, as chairman of the IMO correspondence group, urged all members of the Committee to participate actively in the work of that group.

4.10 The Committee further noted that consultations have been held with the IMO Secretariat on the initial draft of the revised Resolution A.888(21) and a letter had been sent by the Director of the IMO Maritime Safety Division to the IMSO Head of Technical Services in this respect. This letter indicated that the system as proposed in the revision would seem to the IMO Secretariat to be entirely rational and logical, allowing IMSO to perform its oversight functions and utilizing the MSC as appropriate. The final decision lies with the IMO Member States. The IMO Legal Division had also responded with some comments in respect of legal aspects, including liability and settlement of disputes. The Director indicated that he would keep members of the Advisory Committee informed of developments within IMO.

Consideration of the text of a draft Reference Public Services Agreement

4.11 The Committee reviewed the text of the draft Reference Public Services Agreement which had been prepared by the Director, in comparison with the text of the current Public Services Agreement between Inmarsat and IMSO, along with the text prepared by Inmarsat and potential providers.

4.12 The Director indicated that he considered that there were two areas on which there were differences between the draft versions of the Public Services Agreement prepared by the Director on the one hand and by Inmarsat and the potential Providers on the other. These relate to:

- (a) financial matters (the providers group had suggested that the providers should exercise a greater control of the budgetary process); and
- (b) the oversight mechanism (the providers group had suggested the establishment of a common board composed of IMSO and Providers to share the responsibility for the execution of the oversight).

4.13 Being aware of these differences in approach, the Committee agreed that, for the purposes of its consideration of the various drafts of the Reference Public Services Agreement, it would adopt the general policies that:

- (a) the development and approval of a detailed budget for the Organization was a matter for the Assembly, which had already established a procedure for this process;
- (b) it would not be appropriate for providers to have a formal role in the budgetary development process, but it would be necessary for them to be assured that their contributions were limited individually to their share of the budget relating to oversight of mobile satellite services for the GMDSS as approved by the Assembly;
- (c) the budget should be developed in such a way that those elements relating to GMDSS oversight can be identified separately from the costs of any other responsibilities the Organization may be asked to assume in the future;
- (d) with regard to the principles of oversight, it would not be appropriate for providers to participate in the oversight of each other through a collective board as this could lead to potential breaches of commercial confidentiality and a dilution of the public interest in assuring the proper delivery of GMDSS services. Oversight was ultimately a matter for IMSO, in discharging any public responsibilities placed upon it by the Assembly; and
- (e) it was recognized that continued close cooperation with the providers would be important for the success of the oversight process.

4.14 The Director also indicated that, once sufficient progress had been achieved in relation to the draft Reference Public Services Agreement (potentially by the next session of the Advisory Committee in May/June 2005), formal approval by the IMSO Assembly of the amendments to the Convention and of the Reference Public Services Agreement would be needed. It is anticipated that IMO will have made similar progress in relation to the revision of IMO Assembly Resolution A.888(21) within the same timescale.

4.15 The Committee began its discussions by considering the following overarching issues:

- (a) the need to protect the continuity of GMDSS, under all possible scenarios; and
- (b) the legality and enforcement of the draft termination provisions.

4.16 The Committee based its discussion of the draft Reference Public Services Agreement on a table prepared by the Director comparing the current text of the Public Services Agreement, the draft prepared by Inmarsat and potential providers and the draft prepared by the Director. A wide-ranging discussion included comments relating to:

- (a) the non-compliance provisions, which would replace the “special share” provisions in the current Memorandum and Articles of Association of Inmarsat;
- (b) liability during any period of non-compliance;
- (c) whether IMSO’s obligations relating to peaceful purposes should be reflected in the Reference Public Services Agreement; and
- (d) whether IMSO’s obligations, including the obligation to “*serve rural and remote areas where there is a need*” should be reflected in the Reference Public Services Agreement in addition to the obligations of the provider concerned.

4.17 In the light of these discussions, the Committee carried out a detailed review of the text of the draft Reference Public Services Agreement prepared by the Director.

4.18 As agreed by the Committee, representatives of Inmarsat, Iridium and Orbcomm then attended the subsequent part of the meeting during which the draft Reference Public Services Agreement was considered, as observers. The representative of Orbcomm attended via conference call.

4.19 The Committee received a presentation by Mr Richard Vos on behalf of the “GMDSS Service Providers Drafting Group” (the Group) comprising Boeing Inc., North American CLS, Inmarsat Ltd, Iridium LLC and Orbcomm Inc, providing that Group’s comments on the draft Reference Public Services Agreement prepared by the Director in document AC/10/3. The Group also provided their comments to the Committee in a paper tabled during the session.

4.20 The Group had reviewed the draft Reference Public Services Agreement prepared by the Director and had commented that the draft adopts a less consultative approach than the Group had suggested, and seeks to impose conditions that may no longer be appropriate in an environment where there is competition for GMDSS provision. In particular, the Group noted that:

- (a) it requires five years’ statutory notice of discontinuation of any GMDSS service, whilst imposing obligations for Service Providers to comply with all standards that may be imposed at any time;
- (b) it gives IMSO the power of a regulator, whilst denying any form of appeal to higher authority other than via itself, or through the Courts (even here recourse is extremely limited); and
- (c) it provides for no formal participation by Service Providers in the budget setting process.

4.21 The Committee expressed its appreciation to the Group which had prepared proposals for the draft Reference Public Services Agreement, as well as their comments on the draft prepared by the IMSO Director, some of which had been taken into account by the Committee in its discussions earlier in the meeting (for example, reference to the UNICITRAL Rules as a means of settling disputes between the Company and the Organization).

4.22 The Committee noted that there appeared to be agreement on some of the issues raised by Inmarsat and potential GMDSS providers. However, there were a number of issues still to be resolved, in particular the budgetary apportionment and compliance mechanisms. The Committee particularly invited the Director to work with IMO and the Group to see if the issue of five years’ notice could be resolved.

4.23 The Committee agreed that the cooperation of potential providers was important and their concerns should be taken into account, as far as possible without compromising the oversight principles which must always reflect the essential public interest in the provision of GMDSS services.

4.24 The Committee, therefore, requested the Director to continue to work with Inmarsat and potential GMDSS providers to prepare, on the basis of the draft prepared by the Director, a further consolidated text of a draft Reference Public Services Agreement, taking into account discussions at this meeting, to be presented to members of the Committee for discussion at its next meeting. The Committee noted that the Director will keep members of the Committee fully informed of progress on the text of the draft Reference Public Services Agreement.

5 ANY OTHER BUSINESS

5.1 Measures to Enhance Maritime Security

5.1.1 The Committee noted that, at its Seventeenth Session, the Assembly noted a statement by the Director that IMO is currently discussing the issue of Long Range Identification and Tracking of Ships (LRIT), and has charged the IMO Sub-Committee on Search and Rescue (COMSAR) with making recommendations. One possibility was that IMO will decide to ask IMSO whether it will be willing in future to carry out oversight and some other roles in relation to LRIT. The Assembly endorsed the Director's intention to keep in close touch with developments in this area and inform the Assembly accordingly (ASSEMBLY/17/Report, paragraph 10.3.9 refers).

5.1.2 The Committee also noted that, at its Seventy-Eighth Session in May 2004, the IMO Maritime Safety Committee (MSC) instructed COMSAR to develop and propose a robust intergovernmental oversight scheme for the approved LRIT providers. During discussion at a working group held during COMSAR 9, the working group encouraged IMSO and the United States to ensure that their proposals on the practical operation of an LRIT system were brought to the attention of MSC formally as written documents so that they could be properly taken into account (IMO document COMSAR 9/WP.5 refers).

5.1.3 The Committee noted the intention of the Director to submit AC/10/5 “Measures to Enhance Maritime Security: A Practical System for Implementing Long Range Identification and Tracking of Ships (LRIT)”, to the Eightieth Session of MSC, as an IMSO Secretariat paper. In accordance with normal practice, the Director will also send the document to all IMSO Member States for their information.

5.2 **Update on UNIDROIT**

5.2.1 The Committee noted that, at its Seventeenth Session, the IMSO Assembly (ASSEMBLY/17/Report, paragraph 10.8.4 refers) had:

- (a) considered that, provided the Secretariat was able to maintain the focus on its primary purpose, and there would be no adverse effect on the Organization’s financial position, it could be possible for the Director to consider undertaking the role of Supervisory Authority in the future;
- (b) requested the Director to continue to monitor developments within UNIDROIT in relation to the possible role envisaged for IMSO as a Supervisory Authority for the Space Assets Protocol, and to report to the next session of the Assembly and to the Advisory Committee on all implications, including costs; and
- (c) also requested the Director to inform UNIDROIT accordingly.

5.2.2 The Committee noted that the Director intended to participate in the Third Meeting on the Space Assets Protocol to be held in Rome in June 2005.

5.3 **Date of Next Meeting**

The Committee noted that Eleventh Session of the Advisory Committee would be held on 24 and 25 May 2005, after the meeting of the IMO Maritime Safety Committee.

5.4 **Possible Extraordinary Session of the Assembly**

The Committee noted that the Seventeenth Session of the Assembly had anticipated that an Extraordinary Session of the Assembly might be

necessary for formal approval by the Assembly of the amendments to the Convention and of the Reference Public Services Agreement. Recognizing that further consultations were needed regarding the date for such an Extraordinary Session of the Assembly, the Committee agreed that the Director should make provisional reservations with the Inmarsat conference facilities for the week of 7 to 11 November 2005, pending the outcome of work on the Reference Public Services Agreement. The Committee noted the suggestion that the Extraordinary Session of the Assembly could be held during the week commencing 5 September 2005. The Committee will discuss this further at its next session.

6 APPROVAL OF THE REPORT

The Meeting approved the Report of its Tenth Session, by correspondence.

AGENDA FOR TENTH MEETING OF ADVISORY COMMITTEE

- 1 Opening of the Meeting
- 2 Approval of Agenda
- 3 Outcome of the Ninth Session of the Advisory Committee
- 4 Draft Reference Public Services Agreement
- 5 Any Other Business
- 6 Approval of Report

LIST OF PARTICIPANTS**Chairman: Mr M. Dukuly**

| | |
|-------------------------|---|
| BRAZIL | Mr José Bastos Mollica Private Services Office National Telecommunications Agency (ANATEL) |
| DENMARK | Mr Jørgen Rasmussen (via conference call) Chief Ship Surveyor Danish Maritime Authority |
| ITALY | Rear Admiral ICG Giancarlo Olimbo Maritime Attaché Representative of Italy to IMO Embassy of Italy, London Cdr Cosma Scaramella Italian Coast Guard |
| JAPAN | Mr Akira Nishihara Director, International Organizations Office International Affairs Department Telecommunications Bureau Ministry of Internal Affairs and Communications Mr Shuji Yamaguchi First Secretary Embassy of Japan, London |
| LIBERIA | His Excellency Mr Mohammed Dukuly (Chairman) Permanent Representative of the Republic of Liberia to IMO |
| MALTA | Ms Vanessa Frazier First Secretary (Consular/Information) Embassy of Malta, London |
| MARSHALL ISLANDS | Mr David J. F. Bruce Permanent Maritime Representative of the Republic of the Marshall Islands to IMO. |

| | | |
|-------------------------------------|---|---------------------|
| MEXICO | Dr. David Enriquez Counsellor (Maritime Affairs) Mexican Embassy, London | |
| POLAND | Mr Pawel Czerwinski Counsellor - Permanent Representative of the Republic of Poland to the IMO Embassy of Poland, London | |
| RUSSIAN FEDERATION | Mrs Nadya Nesterenko Morsviazsputnik | |
| SOUTH AFRICA | Mr Luthando S. Mkumatela General Manager Office of the Director General Department of Communications | |
| SPAIN | Mr Luis Sanz Gadea Head of Division for International Organizations Ministry of Industry, Tourism and Commerce | |
| UNITED KINGDOM | Mr Mike Leach International Communications Department of Trade and Industry | |
| | Mr Gary R. Hunt International Communications Department of Trade and Industry | |
| UNITED STATES OF AMERICA | Mr Richard H. Lamb International Communications and Information Policy Department of State | |
| | Ms Diane Steinour Office of International Affairs National Telecommunications and Information Administration Department of Commerce | via Conference Call |

OBSERVERS

FRANCE

Mr Michel Babkine
Organisme d'étude et de coordination pour la
recherche et le sauvetage en mer (SECMER)

PORTUGAL

Ms Cristina Lourenço (via conference call)
External Affairs Department
ANACOM

* * * * *

INMARSAT

Mr Richard Vos
Adviser, Government Relations

Mr Nicholas Rowe
General Counsel

IRIDIUM

Mr Gregory Francis

ORBCOMM

Mr Greg Flessate via conference call
Vice-President, Government Services

* * * * *

IMSO

Mr Jerzy W. Vonau
Director

Mr Andy Fuller
Head of Technical Services

Ms Jenny Ray
Head of Secretariat Services

TERMS OF REFERENCE FOR THE ADVISORY COMMITTEE

1 ADVISORY COMMITTEE

1.1 The Advisory Committee is established by the Assembly on a permanent basis, to carry out, on behalf of and under delegation from the Assembly, the tasks set forth in these Terms of Reference.

1.2 The Advisory Committee shall consist of representatives from the fifteen Parties, elected by each Session of the Assembly, taking into account the need for full geographical representation, and for continuity of membership.

1.3 The Committee shall appoint its own Chairman.

2 TASKS

2.1 The Committee shall consult with the Director and give its guidance and advice to the Director on the following matters:

- (a) preparation by the Director of the annual budget of the Secretariat, and accounting and auditing procedures;
- (b) any proposed action by the Director to convene an extraordinary general meeting of the Holdings Company or initiate arbitration or judicial proceedings in the event of any alleged breach by the Companies of their obligations under the PSA, provided that if the Committee so requests, or the Director so decides, the Director shall convene an extraordinary session of the Assembly to authorize appropriate enforcement action;
- (c) determination by the Director of the staffing structure of the Secretariat, and standard terms of employment of Secretariat staff, and the Staff Rules;
- (d) any other matters delegated by the Assembly; and
- (e) any other matters on which the Director identifies a need to consult the Advisory Committee on a case-by-case basis.

2.2 The Committee shall approve the regular report of IMSO to the IMO envisaged in Article 4.3 of the Public Service Agreement (PSA), prepared and submitted by the IMSO Director.

2.3 The Committee shall agree the annual budget and resolve any issues regarding the annual budget which may be submitted by the Company.

2.4 The Committee shall review the Audited Annual Financial Statements of the Organization, and submit a report thereon to the Assembly.

3 WORKING METHODS

3.1 The Rules of Procedure for the Assembly shall *mutatis mutandi* apply to the Advisory Committee.

3.2 The Committee shall determine its own working procedures, including the frequency and location of its meetings.

3.3 The Director is requested to provide such practical assistance to the Committee as may be necessary. In arranging its work and holding meetings, the Committee shall endeavour to minimise costs to the extent possible.

4 COSTS

Costs associated with all travel, accommodation and subsistence of the members of the Committee at their meetings shall be borne by their respective Parties.

5 REPORTING TO PARTIES AND TO THE ASSEMBLY

On behalf of the Committee, the Chairman shall, through the Director, send regular reports to Parties on the results of its work, and shall also submit a report thereon to the Assembly.